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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 E2 OPTICS, LLC,

11 Plaintiff,

12 v.
13 TEKNON CORPORATION, NEAL
14 STOBAUGH, AND JOSHUA CHILDS,

15 Defendants.

16 CASE NO. 2:17-cv-00876-MJP

17 **MODEL STIPULATED
18 PROTECTIVE ORDER**

19 Noted for Consideration: October 3,
20 2017

21 Plaintiff E2 Optics, LLC and Defendants Teknon Corporation, Neal Stobaugh, and Joshua
22 Childs stipulate and agree to this protective order in the interest of efficiency and judicial economy,
23 particularly in the interest of avoiding ancillary litigation of discovery issues relating to
24 confidential commercial and/or proprietary information, and the procedures set forth herein for
25 designating and protecting confidential commercial and/or proprietary information. Plaintiff and
26 Defendants stipulate to the following terms. All departures from the model Protective Order are
 shown in track changes:

1. PURPOSES AND LIMITATIONS

2. Discovery in this action is likely to involve production of confidential, proprietary, or
3. private information for which special protection may be warranted. Accordingly, the parties hereby

1 stipulate to and petition the court to enter the following Stipulated Protective Order. The parties
2 acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket
3 protection on all disclosures or responses to discovery, the protection it affords from public
4 disclosure and use extends only to the limited information or items that are entitled to confidential
5 treatment under the applicable legal principles, and it does not presumptively entitle parties to file
6 confidential information under seal.

7 2. **“CONFIDENTIAL” MATERIAL**

8 Confidential information may be designated “CONFIDENTIAL” or “HIGHLY
9 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

10 “CONFIDENTIAL” material shall include the following documents and tangible things
11 produced or otherwise exchanged: non-public marketing, sales, and financial information
12 (including, but not limited to documents reflecting revenue, income, debt, lines of credit, tax
13 returns, and documents identifying corporate expenditures, and bidding or pricing models or
14 formulas); sensitive information concerning trade secrets or other confidential research and
15 development information; personal and/or private identifying information (e.g., birthdate);
16 agreements that contain confidentiality obligations; information that identifies customers and non-
17 public projects; and information about non-public company policies, rules, and regulations.

18 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” material shall include the
19 following documents and tangible things produced or otherwise exchanged: extremely sensitive
20 CONFIDENTIAL information, the disclosure of which to another party or non-party would create
21 a substantial risk of serious harm that could not be avoided by less restrictive means.

22 3. **SCOPE**

23 The protections conferred by this agreement cover not only confidential material (as
24 defined above), but also (1) any information copied or extracted from confidential material; (2) all
25 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
26 conversations, or presentations by parties or their counsel that might reveal confidential material.

1 However, the protections conferred by this agreement do not cover information that is in
2 the public domain or becomes part of the public domain through trial or otherwise.

3 4. **ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

4 4.1 **Basic Principles.** A receiving party may use confidential material that is disclosed
5 or produced by another party or by a non-party in connection with this case only for prosecuting,
6 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the
7 categories of persons and under the conditions described in this agreement. Confidential material
8 must be stored and maintained by a receiving party at a location and in a secure manner that ensures
9 that access is limited to the persons authorized under this agreement.

10 4.2 **Disclosure of “CONFIDENTIAL” Information or Items.** Unless otherwise ordered
11 by the court or permitted in writing by the designating party, a receiving party may disclose any
12 confidential material only to:

13 (a) the receiving party’s counsel of record in this action, as well as employees
14 of counsel to whom it is reasonably necessary to disclose the information for this litigation,
15 including, but not limited to, contract review attorneys, law clerks, paralegals, legal secretaries,
16 and graphics or design services professionals or firms retained by counsel;

17 (b) the officers, directors, managers, and employees (including in house
18 counsel) of the receiving party to whom disclosure is reasonably necessary for this litigation;

19 (c) experts and consultants to whom disclosure is reasonably necessary for this
20 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

21 (d) the court, court personnel, and court reporters and their staff;

22 (e) copy, document management, or electronic discovery or imaging services
23 retained by counsel to assist in the management and duplication of confidential material, provided
24 that counsel for the party retaining the copy or imaging service instructs the service not to disclose
25 any confidential material to third parties and to immediately return all originals and copies of any
26 confidential material upon completion of the service;

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed deposition testimony or exhibits to depositions that reveal confidential material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this agreement;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information; and

(h) any mediator retained by the parties or appointed by the Court in this action and employees of such mediator who are assisting in the conduct of the mediation.

4.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY"

Information or Items. Unless otherwise ordered by the court or permitted in writing by the designating party, a receiving party may disclose HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY material only to those persons identified in Section 4.2(a, c-h).

4. Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-party that designates information or items for protection under this agreement must take care to limit any such designation to specific material that qualifies under the appropriate standards. To the extent it is practicable, the designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that

1 other portions of the material, documents, items, or communications for which protection is not
2 warranted are not swept unjustifiably within the ambit of this agreement.

3 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
4 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
5 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
6 and burdens on other parties) expose the designating party to sanctions.

7 If it comes to a designating party's attention that information or items that it designated for
8 protection do not qualify for protection, the designating party must promptly notify all other parties
9 that it is withdrawing the mistaken designation.

10 5.2 Manner and Timing of Designations. Except as otherwise provided in this
11 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
12 ordered, disclosure or discovery material that qualifies for protection under this agreement must
13 be clearly so designated before or when the material is disclosed or produced.

14 (a) Information in documentary form: (e.g., paper or electronic documents and
15 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
16 the designating party must affix the word "Confidential" or "Confidential – Attorneys' Eyes
17 Only." The designation shall also be included in a data field reserved for confidentiality
18 designations in the load file metadata for each document exchanged electronically

19 (b) Testimony given in deposition or in other pretrial proceedings: the parties
20 and any participating non-parties must identify on the record, during the deposition or other pretrial
21 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
22 after reviewing the transcript. Any party or non-party may, within fifteen (15) business days after
23 receiving the transcript of the deposition or other pretrial proceeding, designate portions of the
24 transcript, or exhibits thereto, as confidential. Until such time as this fifteen (15) day period has
25 concluded, the entirety of the deposition transcript shall be presumptively treated by the receiving
26 party as having been designated by the producing party as "Confidential – Attorneys' Eyes Only"

1 during the deposition. If a party or non-party desires to protect confidential information at trial,
2 the issue will be addressed before trial.

3 (c) Other tangible items: the producing party must affix in a prominent place
4 on the exterior of the container or containers in which the information or item is stored the word
5 "Confidential" or "Confidential – Attorneys' Eyes Only." If only a portion or portions of the
6 information or item warrant protection, the producing party, to the extent practicable, shall identify
7 the protected portion(s).

8 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
9 designate qualified information or items does not, standing alone, waive the designating party's
10 right to secure protection under this agreement for such material. Upon timely correction of a
11 designation, the receiving party must make reasonable efforts to ensure that the material is treated
12 in accordance with the provisions of this agreement.

13 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

14 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
15 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
16 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
17 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
18 challenge a confidentiality designation by electing not to mount a challenge promptly after the
19 original designation is disclosed.

20 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
21 regarding confidential designations without court involvement. Any motion regarding confidential
22 designations or for a protective order must include a certification, in the motion or in a declaration
23 or affidavit, that the movant has engaged in a good faith meet and confer conference with other
24 affected parties in an effort to resolve the dispute without court action. The certification must list
25 the date, manner, and participants to the conference. A good faith effort to confer requires a face-
26 to-face meeting or a telephone conference.

1 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
2 intervention, the designating party may file and serve a motion to retain confidentiality under Local
3 Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
4 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
5 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
6 other parties) may expose the challenging party to sanctions. All parties shall continue to maintain
7 the material in question as confidential until the court rules on the challenge.

8 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
9 LITIGATION

10 If a party is served with a subpoena or a court order issued in other litigation that compels
11 disclosure of any information or items designated in this action as “Confidential” or “Confidential
12 – Attorneys’ Eyes Only,” that party must:

13 (a) promptly notify the designating party in writing and include a copy of the
14 subpoena or court order;

15 (b) promptly notify in writing the party who caused the subpoena or order to
16 issue in the other litigation that some or all of the material covered by the subpoena or order is
17 subject to this agreement. Such notification shall include a copy of this agreement; and

18 (c) cooperate with respect to all reasonable procedures sought to be pursued by
19 the designating party whose confidential material may be affected.

20 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

21 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
22 material to any person or in any circumstance not authorized under this agreement, the receiving
23 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
24 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
25 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
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1 and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be
2 Bound" that is attached hereto as Exhibit A.

3 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
4 MATERIAL

5 When a producing party gives notice to receiving parties that certain inadvertently
6 produced material is subject to a claim of privilege or other protection, the obligations of the
7 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
8 is not intended to modify whatever procedure may be established in an e-discovery order or
9 agreement that provides for production without prior privilege review. The parties agree to the
10 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

11 10. NON TERMINATION AND RETURN OF DOCUMENTS

12 Within sixty (60) days after the termination of this action, including all appeals, each
13 receiving party must destroy or return all confidential material to the producing party, including
14 all copies, extracts and summaries thereof, including but not limited to those contained in
15 deposition transcripts or expert reports.

16 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
17 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
18 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
19 product, even if such materials contain confidential material.

20 This order shall not preclude the parties from filing for or obtaining any other protective
21 order or other discovery motion.

22 The confidentiality obligations imposed by this agreement shall remain in effect until a
23 designating party agrees otherwise in writing or a court orders otherwise.

24

25 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

26

RICH & HENDERSON PC.

1 DATED: October 3, 2017

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8 Attorneys for Plaintiff

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10 DAVIS WRIGHT TREMAINE LLP

11 DATED: October 3, 2017

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19 Attorneys for Defendants

20 PURSUANT TO STIPULATION, IT IS SO ORDERED

21 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
22 documents in this proceeding shall not, for the purposes of this proceeding or any other proceeding
23 in any other court, constitute a waiver by the producing party of any privilege applicable to those
24 documents, including the attorney-client privilege, attorney work-product protection, or any other
25 privilege or protection recognized by law.

26 DATED: 10/4/17.



Name of Judge MARSHA J. PECHMAN
United States District Court Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____, [print or type full name], of _____, [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on [date] in the case of *E2 Optics, LLC v. Teknon Corporation et al.*, No. 2:17-cv-00876-MJP. I agree to comply and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
District of Washington for the purpose of enforcing the terms of this Stipulated Protective
Order even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: